

STATE OF VERMONT  
PUBLIC SERVICE BOARD

Docket No. 6812

Petition of Entergy Nuclear Vermont Yankee, )  
LLC and Entergy Nuclear Operations, Inc. )  
pursuant to 30 V.S.A. Sec. 248 for Certificate )  
of Public Good to modify certain generation )  
facilities )

PREFILED TESTIMONY OF  
DEENA L. FRANKEL  
IN SUPPORT OF THE MEMORANDUM OF UNDERSTANDING

ON BEHALF OF THE  
VERMONT DEPARTMENT OF PUBLIC SERVICE

November 5, 2003

Summary: The purpose of Ms. Frankel's testimony is to explain the three public benefits programs included in the agreement among the Department of Public Service, Entergy Nuclear Vermont Yankee, LLC, and Entergy Nuclear Operations, Inc., and to recommend Board approval of the programs.

Prefiled Testimony  
of  
Deena L. Frankel

1 Q. Please state your name and occupation.

2 A. My name is Deena L. Frankel, and I am the Director for Consumer Affairs & Public  
3 Information for the Vermont Department of Public Service (DPS or the Department).

4 Q. Please state your educational background and professional experience.

5 A. I attended Florida State University, majoring in mass communications. I hold an  
6 Masters of Arts in Conflict Resolution from the McGregor School of Antioch University, and a  
7 professional certificate in Mediation and Conflict Resolution from Woodbury College. Prior to  
8 coming to Vermont in 1994, I worked for 17 years in Florida and Connecticut at the state and  
9 local levels in the fields of consumer and disabilities research and advocacy, organizational  
10 development and marketing. Between 1994 and 1997, I owned and operated an organizational  
11 development consulting firm based in Montpelier. I have over twenty years of management  
12 experience, including grants management, contract supervision and administration in both large  
13 and small organizations. From 1996 through 2001, I also served as an adjunct faculty member  
14 in the Woodbury College Mediation and Conflict Management Program.

15 Q. What are your responsibilities in your current position?

16 A. I am responsible for administering the Department's Consumer Affairs & Public  
17 Information Division (CAPI). CAPI is responsible for resolving consumer complaints against  
18 regulated utilities and cable companies, advocating for policies which protect consumer interests  
19 and educating consumers about utility issues so they can more effectively advocate for  
20 themselves. I supervise a staff of four consumer advocates, represent the Department in policy,

1 legislative and public information initiatives related to consumer issues, and carry out the  
2 Department's administrative responsibilities with respect to Vermont's Universal Services  
3 Fund.

4 Q. What is the purpose of your testimony?

5 A. The purpose of my testimony is to explain the three public benefits programs included in  
6 the agreement among the Department of Public Service, Entergy Nuclear Vermont Yankee,  
7 LLC, and Entergy Nuclear Operations, Inc., and to recommend Board approval of the  
8 programs.

9 Q. What public benefits does the settlement provide?

10 A. The settlement includes three public benefit funds, to be funded by the mechanism  
11 described in Section 2 of the Memorandum of Understanding (MOU). (Dave Lamont, in his  
12 testimony supporting this MOU, explains the funding mechanism). The funds include: an  
13 Environmental Benefit Fund, a Low Income Benefit Fund, and an Entergy Fund for Economic  
14 Benefit.

15 Q. How does the MOU allocate monies among the three funds?

16 A. The Economic Benefits Fund will receive an initial cash payment of \$200,000 as  
17 provided in the final paragraph of Section 2 of the MOU. The Low Income Fund will receive  
18 an allocation of \$250,000 per year or the entire amount of funding if the total is less than  
19 \$250,000. The remaining proceeds from energy sales as described in Section 2 will be  
20 allocated to the Environmental Benefit Fund.

21 Q. What is the projected amount of funding that will be available through each fund over the  
22 remaining licensed life of the plant?

1       A.           A summary of the projected funds to each purpose by year and in total appears in  
2       Exhibit DPS-DLF 1.

3               The \$200,000 allocated to the Economic Fund on a one-time basis will be made as a  
4       single, up-front payment by Entergy 90 days after approval of the MOU and issuance of its  
5       CPG. The proceeds available to the other two funds are projected as based on the testimony of  
6       David Lamont as shown in his Exhibit DPS-DLF-5.

7               Each calendar year covered by the settlement, no later than March 31, Entergy will  
8       have deposited \$250,000 (or the entire amount of the fund if less than \$250,000 is available)  
9       into the Low Income Benefit Fund. In this manner, the maximum Low Income Benefits  
10      available over the life of the agreement will be \$2.25 million. The actual amount projected is  
11      \$2,170,795 because less than \$250,000 (\$170,795) is projected to be raised by the funding  
12      mechanism in the first year, 2004.

13              Any funds remaining from the funding mechanism, over and above the \$250,000 per  
14      year, will be deposited into the Environmental Benefit Fund. A total of \$7,814,704 is projected  
15      to be available over the life of the agreement. The amount per year, which ranges from a low of  
16      \$0 in 2004 to a high of \$1,434,315 in 2009, appears in Exhibit DPS-DLF-1.

17  
18      Q.       How will the Low Income Benefit Fund be used?

19      A.       The principal and earnings of the Low Income Benefit Fund will be used for emergency  
20      assistance to low-income Vermonters to prevent disconnection of energy services during the  
21      winter months. The monies from the fund will be transmitted by the Secretary of Administration  
22      to the Warmth program, which is administered by the state's five Community Action Programs  
23      (CAPs). Currently, Warmth is funded by utility ratepayer donations transmitted through their  
24      electric utilities to the CAPs. The CAPS handle eligibility determination and the issuance of  
25      benefits. The funding from the Low Income Benefit Fund will be added to the existing Warmth  
26      funds and administered according to the same eligibility criteria and staffing as the program that

1 is already in place. The program's administrative costs are minimized by contributions from  
2 some participating utilities, ensuring that a very high percentage of benefits go directly to  
3 consumers. The one change from the existing program will be that consumers in the Central  
4 Vermont Public Service territory will be eligible to receive the funds. Currently, CVPS  
5 maintains its own program, separate from Warmth, but also administered by the CAPs. The  
6 Warmth funds deposited from the Low Income Benefit Fund will be available to CVPS  
7 customers on an equal basis with the customers of other utilities.

8 Q. How will the Environmental Benefit Fund be used?

9 A. The principal and earnings of the Environmental Benefit Fund are designated and  
10 restricted to use for Governor Douglas's Clean & Clear Water Initiative (the Initiative). The  
11 Governor announced the Initiative in late September to accelerate clean-up of phosphorous and  
12 other pollutants in Lake Champlain and other waterways of the state. The Initiative seeks to  
13 speed up full implementation of the agreements between Vermont and New York and Quebec  
14 to reduce pollution in the shared waterways, to implement the Lake Champlain Phosphorous  
15 Total Maximum Daily Load (TMDL) plan approved by the U.S. Environmental Protection  
16 Agency, and to maximize federal, state, local and private funding toward these ends.

17 Although the components of the Initiative will rely heavily on federal funding, an  
18 estimated \$3.5 million to \$5 million of funding will be needed per year from sources within  
19 Vermont. Monies from the Environmental Benefit Fund will go toward this purpose. The  
20 Initiative calls for speeding up completion of Lake Champlain TMDL from the original date of  
21 2016 to the earlier date of 2009. For the two years the Environmental Benefit Fund exists  
22 under the MOU beyond the project 2009 TMDL completion, funds will be devoted toward  
23 other components of the Initiative, such as Connecticut River and Lake Memphremagog clean-  
24 up.

25 Monies earmarked for the Environmental Benefit Fund will be deposited into a state

1 special account. Proceeds from the account will be disbursed by the Secretary of  
2 Administration to agencies and organizations charged with carrying out components of the  
3 Initiative, consistent with the purpose of the funds.

4 Q. How will the Entergy Fund for Economic Benefit be used?

5 A. The principal and earnings of the Entergy Fund for Economic Benefit will be disbursed  
6 by the Secretary of Administration to the Department of Economic Development for the  
7 purpose of marketing new business investment in Vermont. Funds will be expended to enhance  
8 business attraction and expansion efforts of the Department.

9 Q. Are the criteria for charitable contributions as a part of settlements established by the Board in  
10 Docket 6331, *Petition of the Department of Public Service for Investigation of and*  
11 *Sanctions Against MCI WorldCom, Inc.* (order of 9/13/01 at 34-35), relevant in this case?

12 A. In Docket 6331, the Board required that, when DPS proposes a charitable  
13 appointment as a part of a settlement, the Department must explain in detail:

- 14 1. "The characteristics of the appointee, including its mission, the nature of its work, how it  
15 is managed, and the status of other funding sources;
- 16 2. "[T]he degree of similarity between (i) the beneficiaries of that organization's work, and  
17 (ii) the characteristics of the actual and potential customers affected by a regulated  
18 company's allegedly improper behavior;"
- 19 3. "[T]he purposes of the settlement funds and the likely outcomes; and
- 20 4. "[T]he manner in which the effectiveness of the expenditures will be evaluated and  
21 reported."

22  
23 The settlement in Docket 6331 for which these criteria were established by the Board  
24 concerned the disposition of penalties. The funding under discussion in the current MOU does

1 not come from penalties, but from an explicit revenue-sharing funding mechanism. Despite this  
2 distinction, DPS offers the following analysis concerning the consistency between the Docket  
3 6331 criteria and the proposed MOU disbursements.

4 Q. For each fund, please outline the characteristics of the appointee, including its mission, the  
5 nature of its work, how it is managed, and the status of other funding sources.

6 A. Low Income Benefit Fund: The Warmth program, through which the Low Income  
7 Benefit Fund will be disbursed to low income Vermonters to prevent winter disconnection of  
8 energy services, is administered by the state's five CAPs. They are Northeast Kingdom  
9 Community Action (NEKCA), Central Vermont Community Action Council (CVCAC),  
10 Bennington-Rutland Opportunity Council (BROC), Southeastern Vermont Community Action  
11 (SVCA), and the Champlain Valley Office of Economic Opportunity (CVOEO). CVOEO has  
12 a coordinating role for the entire program. Each of the CAPs is a 501(C)(3) private, not-for-  
13 profit agency, governed by a board of directors, with a mission statement dedicated to helping  
14 low income people achieve economic independence.

15 Funds from the Low Income Benefit Program will supplement privately raised funds in  
16 the Warmth program. In the 2002-2003 heating season, the Warmth program, and CVPS's  
17 version, Share Heat, provided approximately \$250,000 in crisis fuel assistance through private  
18 donations raised by the utilities. This fund raising will continue throughout the life of the Low  
19 Income Benefit Program, ensuring that the new funds, supplement, rather than supplant existing  
20 dollars.

21 Environmental Benefit Fund: The Initiative to which Environmental Benefit Funds will be  
22 directed does not consist of a single organization or appointee. Rather, the Initiative coordinates  
23 diverse efforts by agencies, organizations and individuals. At present, eight TMDL programs in  
24 agriculture and ten programs in natural resources have been identified with the Initiative to  
25 achieve specific objectives such as enhancing agricultural best practices, demonstrating

1 experimental alternative manure management technologies, increasing purchase of buffer  
2 easements along streams and lakes, providing support to towns to reduce road erosion, and  
3 stabilizing streambeds. These programs, and others that will be identified with the Initiative in  
4 the future, will be carried out by agencies of state government, such as Department of  
5 Agriculture or the Agency of Natural Resources, by private, not-for-profit organizations, and by  
6 local governments.

7 Funding for the Initiative will come from a federal, state and private sources. The  
8 Governor has announced plans to convene a Governor's Funders' Summit in the next several  
9 months to share ideas for pooling resources for this comprehensive strategy to safeguard  
10 Vermont waterways. The Initiative depends upon the pooling of all possible resource.

11 Entergy Fund for Economic Benefit: The proceeds of the Entergy Fund for Economic  
12 Benefit will go to the Department of Economic Development, an agency of state government.  
13 The funds will supplement existing public funding to further marketing of Vermont for new  
14 business investment.

15 Q. Outline the degree of similarity between (i) the beneficiaries of the funding provided by the  
16 MOU, and (ii) the characteristics of the actual and potential customers affected by the uprate.

17 A. This criterion, as outlined by the Board in Docket 6331, specifically addressed  
18 similarity between the customers affected by a company's alleged misbehavior and the  
19 beneficiaries of any charitable appointment. The original criterion is clearly not applicable in this  
20 case. The criterion as restated can be applied to the current situation.

21 The purpose of the benefit funds is ensure all Vermonters receive clear benefit from the  
22 granting of the uprate. Therefore, the actual and potential customers in question are all the  
23 people of Vermont. The three funds taken together clearly and substantially benefit the entire  
24 state.

25 The Low Income Benefit Fund will benefit customers in need of emergency assistance



1 to maintain energy service during the winter months throughout the state of Vermont. The five  
2 administering CAPs cover the whole state.

3 The Environmental Benefit Fund will contribute to waterway clean-up that directly  
4 benefits the health and quality of life of those Vermonters who live, work and recreate near the  
5 state's waterways. In addition, all Vermonters benefit economically from improved water  
6 quality, which protects and enhances the state's ability to attract tourist and recreation dollars.

7 The Entergy Fund for Economic Benefit benefits all Vermonters by undertaking  
8 activities that strengthen the state's economic climate.

9 Q. For each fund, explain the purposes of the settlement funds and the likely outcomes.

10 A. Low Income Benefit Fund: The purpose of the fund has been detailed above on page 3  
11 of this testimony. The likely outcomes will be a doubling of the number of Vermont households  
12 per year that will receive emergency assistance from the Warmth program to prevent a loss of  
13 energy services during the winter months. Although this amount does not meet the unmet need  
14 for crisis energy support, it will make a significant difference.

15 Environmental Benefit Fund: The purpose of the fund has been detailed above on page  
16 4. Likely outcomes of the fund will be measurable progress toward achievement of the Initiative  
17 goals, including the implementation of the TMDL, the Lake Champlain Management Plan and  
18 the agreement between Quebec and Vermont concerning the Missisquoi Bay.

19 Entergy Fund for Economic Benefit: The purpose of the fund has been detailed on  
20 pages 4-5 above. Likely outcomes of the fund will be increased business investment in Vermont  
21 through the marketing efforts of the Department of Economic Development.

22 Q. For each fund, explain the manner in which the effectiveness of the expenditures will be  
23 evaluated and reported

24 A. Low Income Benefit Fund: The effectiveness of the Low Income Benefit Fund will be

1 evaluated by statistics gathered and reported by the CAPs concerning the number of low  
2 income consumers who avoided loss of energy services during the winter months through  
3 participation in the program. Other measures could include reductions in utility arrearages.

4 Environmental Benefit Fund: The effectiveness of the Environmental Benefit Fund will  
5 be tracked and reported by the state agencies implementing the Initiative, particularly the  
6 Department of Agriculture and the Agency of Natural Resources. These agencies are  
7 accountable to the Governor and are subject to Legislative oversight.

8 Entergy Fund for Economic Benefit: The effectiveness of the Entergy Fund for  
9 Economic Benefit will be tracked and reported by the Department of Economic Development,  
10 which is accountable to the Governor and is subject to Legislative oversight.

11 Q. Does that conclude your testimony?

12 A. Yes it does.